

Denise D. Hilger  
Vice President &  
Associate General Counsel

FMR LLC Legal Department

Mail: 82 Devonshire Street, V7A Boston, MA 02109  
Office: 245 Summer Street, Boston, MA 02210  
Phone: 617-563-6732 Fax: 508-229-9655  
Email: denise.hilger@fmr.com



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**SUBMITTED ELECTRONICALLY**

Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Attention: RIN 1210-AB52

Re: Summary of Benefits and Coverage and the Uniform Glossary

Dear Sir or Madam:

This comment letter is provided in response to the proposed regulations that were issued jointly by the U.S. Departments of Labor, Treasury, and Health and Human Services regarding disclosure of the summary of benefits and coverage and the uniform glossary and published in the Federal Register on August 22, 2011 (the "Proposed Rule"). The comments herein are submitted on behalf of FMR LLC, the parent corporation of a group of financial services companies known as Fidelity Investments, and its subsidiary Fidelity Workplace Services LLC (collectively, "Fidelity"). Fidelity is a leading provider of employee benefit plan services, offering services to plan sponsors in support of a variety of benefit plans and programs including defined benefit, defined contribution, and health and welfare plans. Additionally, Fidelity is a plan sponsor that offers a medical plan to more than 39,000 employees.

The obligation set out by Congress in the Patient Protection and Affordable Care Act to develop and distribute plan summaries that must include numerous specific content requirements but cannot exceed 4 pages in length and cannot use print smaller than 12-point font is challenging, if not impossible, depending on the plan design. We thank the Departments for their work in providing this Proposed Rule to assist plans and plan sponsors with their compliance efforts.

***Sufficient Communications Already Provided in Large Employer Group Market***

While there may be a need for a summary of benefits and coverage ("SBC") in the individual insurance market, the large employer group market, including self-insured plans, already does an



effective job in disseminating plan information. Large employers that sponsor health plans typically provide plan information in personalized printed and/or dynamic on-line documents that describe plan provisions to eligible participants and beneficiaries in easy-to-understand language. These materials are augmented with decision support tools and services that, for example, allow participants to compare plans side-by-side and to determine whether their physicians participate in the plan. Further, summary plan descriptions (“SPDs”) are always available for participants seeking additional plan details.

Employers expend considerable resources developing and making these communications and tools available to facilitate participant decision-making. Given economic realities, requiring these employers to develop and send SBCs that cover much of the same information in addition to all that is already being provided may result in the elimination of existing communications and tools that are more comprehensive and useful than communications following the SBC constraints.

We encourage the Departments to consider as an acceptable alternative to SBCs in the group market, benefit option communications and tools that are reasonably designed to enable comparison among the benefit options offered by the employer, provided that such communications and/or tools meet certain basic content requirements, such as the inclusion of a statement about whether the plan provides minimum essential coverage.

### ***Model SBC is Inadequate to Address Wellness Programs***

Many large employers provide various programs to enhance employee awareness of health concerns and encourage healthy behaviors. These programs often include incentives for healthy behaviors and these incentives may vary by the underlying health plan and by the activities undertaken by the individual. The model SBC as currently proposed cannot fully depict all the variables that should be taken account of when an employee is faced with an enrollment decision.

For example, in Fidelity’s own plan, employees are able to undertake healthy activities which earn them “points.” The points are then converted to employee contribution deductions in the following quarter. Each point currently equals \$1 of contribution reduction. Thus, each employee could have a unique premium contribution amount each quarter.

### ***Model SBC Should not be Personalized***

The model SBC as currently proposed includes certain data elements that may vary by employee, such as the premium (or contribution rate) and the coverage period. These elements of “personalization” create a level of complexity that will require costly development. The large employer/self-funded group market has already developed, at considerable expense, effective means of communicating these personal variations to employees and beneficiaries.



For example, Fidelity currently offers its own employees eight different plan options, with at least two options available in each geographic region. Each plan option has three tiers of coverage available (individual, individual +1, and family). There are different employee contribution amounts based on full-time or part-time; and three salary bands that require higher paid employees to contribute more to their coverage (<\$75,000; 75,000-\$149,999; and ≥\$150,000). Thus, Fidelity would be required to create 120 different SBCs for its own medical plan. Currently all of this information is contained in a single chart which provides the relevant information as well as transparency so that all employees have access to the variables that drive the contribution rates paid by different populations.

Re-programming these market-developed solutions to meet a new standard is not an effective use of resources and it increases the total required content of the SBC. We recommend modifying the SBC template to include only those elements that are attributes of the plan itself (such as co-pays and deductibles) and exclude elements that may vary by employee.

### ***Distribution Requirements are Costly and Counter to "Green" Initiatives***

The Proposed Rule's default distribution method of mailing paper-based summaries is expensive, is inconsistent with many employers "go green" initiatives, and, in cases where an employee has many plan choices, will likely be ineffective with respect to the objective of providing clarity when faced with making plan enrollment choices. Fidelity's enrollment services enable participants to make enrollment elections online or via telephone, and it would be most efficient and logical to allow plan sponsors to provide participants with the summary information at the time the participant is making an enrollment decision, such as via a link to an insurer's or administrator's website that is served up as part of the online enrollment. The Departments should embrace a notice and access approach to communicating (i.e., provide participants with notice of where to access information online) as the default method. Any concerns about the lack of on-line access can be addressed by requiring that the participant be given reasonable notice about where to find the information and a telephone number to call to request a paper notice instead.

Further, the Proposed Rule requires that SBCs be furnished to beneficiaries who live at an address that is different than the participant's address. Children may be covered by their parent's plan up to age 26 regardless of their status as tax dependents; however, those children do not have a right to make benefit plan elections – only the parent participant can elect to enroll dependents. Thus, the provision of duplicate SBCs to dependents has limited value. We recommend that the obligation be modified so that additional SBCs are required to be sent to dependents at different addresses only if requested.

In addition, while the Departments have sought to address unnecessary duplication of SBC notices as between issuers and group health plans, additional exceptions are warranted. Plans should not be required to furnish an SBC to participants who already have received a copy during annual enrollment or as a new-hire, provided that participants may receive an SBC upon request. Under the Proposed Rule, for example, an SBC must be furnished in connection with the first day of eligibility

for enrollment, but the Proposed Rule does not explain how to satisfy this rule in connection with COBRA continuation coverage (because eligibility for coverage is retroactive to a qualifying event) or whether it is necessary to provide an SBC if the individual is a current plan participant who has access to information about her enrollment options through a COBRA election notice. We recommend that the obligation be modified for all events that fall outside of annual enrollment so that additional SBCs are required to be furnished only if requested.

Finally, since the primary purpose of the SBC is to enable individuals to make an informed choice among available medical plans, plans in which employees are automatically enrolled and no options are offered, such as Employee Assistance Plans, should not require an SBC.

### ***Coverage Examples Should Be Simplified***

Given the variability of treatments and costs, we are skeptical about the ability to provide coverage examples that are representative of what the actual costs will be and are therefore doubtful about their value. Notwithstanding our concerns about the inclusion of the coverage examples in the SBC, the proposed examples are too complex and should be simplified. A simple example for pregnancy coverage is as follows:

A routine pregnancy on average includes X office visits, Y exams, and a 48 hour hospital stay. If total costs for a routine pregnancy equal the national average of \$\_\_\_, your estimated out-of-pocket costs inclusive of your deductible, co-pays, and coinsurance are approximately \$\_\_\_. The costs in your area, as well as your personal circumstances, may vary.

### ***Terminology Does Not Translate Clearly to Group Market***

Many of the terms used in the model SBC make sense when used in connection with the individual insurance market, and they have meaning in the group market, but it is probably not what is intended. For example, there are “renewals” of group policies, but policy renewal does not have significance to participants in a group plan. The event that corresponds more closely to policy renewal of an individual policy is annual enrollment under a group plan. Similarly, “premium” is important to an individual in the individual insurance market and to an employer in the group market, but the participant covered under a group plan is likely most concerned with the participant contribution to the premium as opposed to the premium itself. Additionally, self-funded plan sponsors are careful not to make any representations that would mislead an employee into thinking that a plan was insured and thus governed by state law. Terms such as “carrier,” “premium,” and “renewal” could lead an employee to believe that a plan is insured. This could result in confusion (for example, if a certain service is mandated by state law the employee could believe it is covered under the plan, when in fact the plan is not subject to state law, and the service is not covered). Accordingly, we recommend that all of the terminology in the model SBC be tailored for use with the group market.



### ***Foreign Languages***

Under the Proposed Rule, a group health plan or issuer must provide a written SBC translation into a non-English language in order to satisfy the statutory requirement to furnish the SBC in a culturally and linguistically appropriate manner. In comparison, foreign language assistance in connection with an SPD, which was considered by the Department of Labor in its guidance with respect to SPDs, does not require the involvement of written materials or a translation of the SPD. The foreign language requirements for SPDs and SBCs should be the same because the audience and the subject matter are the same for both documents.

### ***Compliance Date Should be Extended***

The Proposed Rule was to have been published in March, 2011 with a compliance deadline of March, 2012. The Proposed Rule was delayed by approximately 6 months, and published with a 60-day comment period. Assuming the final regulation reflects some changes in consideration of the comments received in response to the Proposed Rule, plans would have only 3-4 months to develop solutions and distribute the required materials. We recommend that the compliance deadline be extended to coincide with the 2013 annual enrollment period which, for the majority of large employer plans, will occur in the fall of 2012.

### ***Conclusion***

Thank you for the opportunity to comment on the Proposed Rule. We appreciate the Departments' consideration of our input, and we would be pleased to discuss these comments and to provide any additional information that the Departments may find helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise Hilger", written in a cursive style.

Denise Hilger